where the testatrix by a codicil expressly revoked certain specific legacies to her granddaughters and proceeded: "and declare that my said will shall be read and construed in all respects as if the names of the said (naming the granddaughters) had not been inserted therein." This was held not to revoke a general pecuniary legacy to one of the granddaughters which had not been expressly revoked. See *Cleoburey* v. *Beckett,* 14 Beav. 583. An obvious mistake in the revoking clause may be cured and given effect as intended; *Home for Incurables* v. *Noble,* 172 U. S. 383. A gift of the residue in a codicil revokes a gift of the residue in the will, since they are clearly inconsistent. *In re Scott's estate,* 141 Cal. 485, *Hubbard* v. *Hubbard,* 198 Ill. 621, *Dowler* v. *Rodes' Adm'r.,* 26 Ky. L. Rep. 1087, 83 S. W. 115. 1 WILLIAMS, EXECUTORS, p. 229, states the rule: "Indeed, it may be stated generally as a canon of construction, that a clear gift cannot be cut down by any subsequent words unless they show an equally clear intention. But in applying this rule it is sufficient that the subsequent words indicate the testator's intention to cut the gift down with reasonable certainty, and the rule does not mean that you are to institute a comparison between the two clauses as to lucidity." It is difficult, without an express revocation of the specific gift, to frame a more positive expression of intention than a provision that one name shall be substituted for another throughout. Many of the courts show a tendency toward instituting that comparison which Mr. WILLIAMS says is not the intention of the rule.

WILLS—EXECUTORS—POWER OF SALE.—The will of testatrix contained the following clause: "I give my personal representatives full power to sell all my real estate wheresoever situated and make deeds to same." A codicil to the will was admitted to probate with the will proper. Proceedings contesting the validity of this alleged codicil were pending. The executors had advertised for sale under the power given in the will a large part of the real and personal property. This was a bill for an injunction to restrain the sale of the realty on the following grounds: (1) That until the determination of the contest of the codicil, the plaintiffs will not know what part of the residuum will be theirs and cannot therefore bid intelligently at the proposed sale. (2) That the personal property of the estate is sufficient to pay all debts and legacies, and should be so applied. (3) That the estate is capable of being divided in kind among the legatees and devisees. *Held,* the power given by the will is ample to justify the executors in selling the realty, and the facts alleged by plaintiffs fail to show that its exercise would be an abuse of discretion. *Rice et al.* v. *Coleman et al.* (1910), — S. C. —, 69 S. E. 516.

The decision was rendered by an evenly divided court; WOODS, J., with whom concurred GARY, J., affirming the decision of the Circuit Court. Their ground for refusing the injunction was that the testatrix knew at the time she made the will that it would not be necessary to sell the realty in order to pay the debts and legacies, since her personal property was more than abundant for these purposes. She could not, therefore, have intended to limit the power to sell to the happening of such a contingency. The position of the plaintiffs as regards bidding at the proposed sale cannot deprive the exe-

cutors of the discretion clearly conferred by the will. Since there is no evidence that the executors intend a breach of trust nor that a sale of the realty would be so injudicious that they could not have exercised an honest judgment in arriving at the intention to sell, there is no ground for the court to deprive them of the power and thus substitute for the discretion of the executors the court's own conceptions. HYDRICK, J., and JONES, C. J., took the position that the injunction was proper for the reason that the power, though sufficient, was only a naked power and should be exercised only for the purpose of administering the estate according to settled principles of law, which make personalty the primary fund out of which debts and legacies are to be paid. A sale of the realty before that fund is exhausted would be an abuse of that power and should not be permitted. The control of testamentary, discretionary trustees by courts of equity has been the subject of some disagreement in our courts. The Legislature of Maine settled the question there at an early date by a statute forbidding the court to restrain the exercise of any powers, given by the terms of the will. In *Morton* v. *Southgate,* 28 Me. 41, the court says: "Where, by the will, a discretion and option is given, to be exercised according to the judgment of the trustee, and such is the plain intention of the testator, it is very doubtful, whether the court can substitute its own judgment, for that of the trustee. It is not within the power of the court, to say, that the will of the testator is unwise, and make a new one." See also, *Leavitt* v. *Beirne,* 21 Conn. 2, where the power of the court to interfere with the exercise of the discretion of the trustees was denied; two judges dissenting. But in *Berry* v. *Hamilton,* 10 B. Mon. (Ky.) 129, 135, where the testatrix left it entirely to the discretion of the trustee as to when her slaves should be freed, it was held that the trustee acted in this regard under the supervision of the Court of Chancery and must emancipate them in a reasonable time. See also *Prendergast* v. *Prendergast,* 3 H. L. Cas. 195, *Hatt* v. *Rich,* 59 N. J. Eq. 492, *Busch* v. *Rapp* (Ky.), 63 S. W. 479, *Bunner* v. *Storm,* 1 Sandf. Ch. (N. Y.) 357, *Matthews* v. *Capshaw,* 109 Tenn. 480, *Randolph* v. *Birmingham Land Co.,* 104 Ala. 355, *Haynes* v. *Carr,* 70 N. H. 463, 49 Atl. 638, *Sells* v. *Delgado,* 186 Mass. 25, *Clark* v. *Clark,* 50 N. Y. Supp. 1041, *Dubois* v. *Barbour,* 27 R. I. 281.